

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JOSE GARDUNO DOMINGUEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71851

Agency No. A75-747-265

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005 ^{**}

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Jose Garduno Dominguez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") summary affirmance without opinion of an Immigration Judge's ("IJ") denial of his application for

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

cancellation of removal. We vacate the BIA's decision and remand.

The IJ denied petitioner's application on two independent grounds: failure to establish continuous physical presence and failure to demonstrate exceptional and extremely unusual hardship to his United States citizen children.

We have jurisdiction to review whether petitioner met the continuous physical presence requirement. *See Romero-Torres v. Ashcroft*, 327 F.3d 887, 890 (9th Cir. 2003). We lack jurisdiction, however, to review whether he satisfied the hardship requirement. *Id.* at 891.

Because the BIA affirmed without opinion, we have no way of knowing on which ground or grounds the BIA affirmed, and in turn whether we have jurisdiction to review the BIA's decision. *See Lanza v. Ashcroft*, 389 F.3d 917, 932 (9th Cir. 2004). Accordingly, we vacate the BIA's decision and remand with instructions to clarify its grounds for affirming the IJ's denial of petitioner's application for cancellation of removal. *Id.*

VACATED and REMANDED.